



Office of the City Manager

ACTION CALENDAR
June 29, 2010

To: Honorable Mayor and Members of the City Council
From: Planning Commission
Submitted By: Dan Marks, Director, Planning and Development
Subject: New 2010 Downtown Area Plan

RECOMMENDATION

Provide direction to staff as to any modifications to the draft of the New 2010 Downtown Area Plan, by working from Planning Commission's draft DAP recommendations and noting changes desired by the Council. At Council's request, Planning Commission's draft DAP focuses only on goals, policies, and key development standards/actions, to provide a more accessible ballot-friendly Plan. In providing direction to staff, the Council should note staff's preliminary analysis as to the adequacy of the 2009 DAP EIR, specifically that additional CEQA-related analysis and findings will be needed if the DAP is placed on the ballot. Staff will return in July for further Council discussion and possible action.

SUMMARY

On February 23, 2010, City Council rescinded the DAP that had been adopted in July 2009 and indicated its desire to define a new DAP and place it on the November, 2010 ballot for consideration by Berkeley voters. At the February meeting, Council gave direction as to how the DAP should be modified and directed that these changes should be drafted and considered by Planning Commission. This report summarizes how Council's direction was implemented.

On May 12, 2010, Planning Commission recommended a draft DAP (Attachment 1) that reflects Council's direction to focus on goals, policies, and development standards. In a few instances, Planning Commission decided that implementing measures that are not development standards were also needed as an essential part of DAP policy statements, and these implementing measures have also been included.

Planning Commission also reviewed a draft of General Plan amendments that would be needed to maintain consistency between the DAP and General Plan (Attachment 2). In addition, the Planning Commission made recommendations that may be inconsistent

with or go beyond Council's direction for the draft DAP, and these have been forwarded for Council's consideration (Attachment 3).

After receiving direction from Council, staff will return with a final draft of the new DAP, General Plan amendments, and CEQA findings for final action by the City Council. If City Council decides to place the new DAP on the November 2010 ballot, it must take action by its meeting on July 13th. In order to meet this deadline, the Council must give its final direction to staff no later than July 6th.

CURRENT SITUATION AND ITS EFFECTS

The existing Downtown Plan was adopted in 1990. A new Downtown Area planning effort was initiated in 2005 as a result of a settlement of a dispute between the University of California and the City of Berkeley regarding the University's Long Range Development Plan (LRDP). The University's LRDP called for 800,000 square feet of new development in and adjacent to Downtown. The City and University recognized that the future of Downtown was of mutual concern and that fostering a healthy, sustainable, livable, and vibrant Downtown was in the interests of both the City and the University. The City and University agreed to foster Downtown revitalization by working together to develop a new Downtown Area Plan that would address community goals while shaping the University's development plans.

To develop a draft DAP for Council consideration, a 42-month process engaged Berkeley community members and commissions. A 21-member Downtown Area Plan Advisory Committee (DAPAC) met over the course of two years, 50 DAPAC meetings and 4 public workshops. The DAP Advisory Committee adopted a draft DAP in November 2007 and presented its recommendations to City Council in January 2008.

Beginning in March 2008, the Planning Commission began developing its recommendations for the Downtown Area Plan. Using the DAPAC Plan as a foundation, and after substantial public comment and a public hearing, the Planning Commission recommended its draft of the DAP to the City Council in May 2009.

Over the course of several meetings, the Council made various modifications to the DAP recommended by Planning Commission -- including incorporating several DAPAC recommendations that were not in the Planning Commission draft. On July 23, 2009, City Council adopted the DAP. By August, 2009, sufficient signatures had been gathered to require that the DAP be referred to the voters as a ballot measure in 2010. On February 23, 2010, City Council chose to rescind the 2009 DAP. At this same meeting, Council provided direction to staff to make significant modifications to the DAP for consideration and recommendation by the Planning Commission. The City Council also indicated its intent to refer the new 2010 DAP to the voters on the November, 2010 ballot. The Planning Commission completed its review and recommendations regarding a revised 2010 DAP on May 12, 2010, and made its recommendation regarding related General Plan amendments on June 9, 2010.

BACKGROUND

In anticipation of the DAP being placed on the November 2010 ballot, Council directed that the new DAP be concise and that it focus on goals, policies, and essential development standards. Starting with a concise draft provided by staff, Planning Commission met four times to consider DAP and General Plan Amendment language. Planning Commission held a noticed public hearing on April 28, 2010, made its DAP recommendations (Attachment 1) on May 12, 2010, and recommended General Plan amendments needed for consistency on June 9, 2010 (Attachment 2).

Planning Commission's principle focus was to refine draft DAP language to better reflect Council's direction. Confusing language was also clarified, and unnecessary language was eliminated. Planning Commission recommendations that appeared to be inconsistent or go beyond the direction given by Council in February have been provided in a separate document (Attachment 3), and also summarized in this report.

The New 2010 DAP and Council's Direction

The following sections describe how and where Council's February, 2010 direction has been incorporated into the draft DAP.

Requirements for All Development. Council's direction called for stronger and clearer requirements for development to: be more sustainable, reduce transportation impacts, provide affordable housing, and provide public open space. These requirements appear in "Policy LU-2.1, Contributions Required of All Development." For clarity, redundant language was eliminated and other policies pertaining to developer contributions follow immediately, including: "Policy LU-2.2: Additional Community Benefits for Buildings Exceeding 75 Feet;" "Policy LU-2.3: Voluntary Green Pathway" (discussed below), and "Policy LU-2.4: Developer Contributions for Open Space."

Voluntary Green Pathway. Policy LU-2.3 would create a "Voluntary Green Pathway" that includes additional development requirements for affordable housing, fair labor practices, energy efficiency, and open space contributions. In exchange for these benefits to the City, such projects would be subjected to a streamlined development review process that would reduce uncertainty associated with gaining project approval. The voluntary Green Pathway would include a streamlined historic resource review process. To clarify this policy, Planning Commission also added a sentence noting that if an historic resource is found to be a Landmark or Structure of Merit, the Green Pathway would not be available to a development and a time-limited design review process.

Limits to Taller Buildings. Policy LU 1.5, Figure LU-1 and Table LU-1, reduce the generally allowed height in "Core Area" and "Inner Core" areas from 85 feet to 75 feet. Compared with the rescinded 2009 DAP, the draft 2010 DAP also reduces the number of buildings that can exceed the generally allowed height from a total of ten (10) buildings to seven (7). In addition, the height of the tallest buildings would be reduced by about 45 feet so that they would not exceed the height of the tallest existing buildings.

Lower Buildings to Protect Residential Neighborhoods. Policies LU-4.2 & LU-7.2, and Figure LU-1, would require buildings to step down where they abut or are across the

street from residential buildings in residential zones. In addition, development would have to be lower along Martin Luther King Jr. Way and along Shattuck south of Durant.

Improve Transit. Policies under Goal AC-4 incorporate the specific requests included in a 2009 letter from AC Transit to reduce travel times, improve reliability and increase pedestrian comfort. Policy 4.4 calls for consideration of a transit center in Downtown.

Green and “Super-Green” Buildings. Requirements and incentives for green buildings – including a requirement that buildings be LEED Gold or equivalent -- appear in Policies under Goals LU-2 and ES-4. In addition, Policy ES-4.3 adds that “Super-Green” projects (i.e. LEED Platinum or “zero net energy”) be allowed to defer building fees.

Additional Planning Commission Recommendations (Separate from Council Direction)

Planning Commission recommended (with 7 ayes and 2 nays) that the New 2010 DAP draft of May 5 be modified in ways that may not be consistent with, or go beyond the Council’s February, 2010 direction. For clarity, these recommendations are presented separate from the draft DAP (Attachment 3) and briefly discussed here.

Voluntary Green Pathway. Planning Commission recommended that explicit reference to the Zoning Adjustments Board (ZAB) and Design Review Committee (DRC) be removed from Policy LU-2.3. Planning Commission proposed that Policy LU-2.3 would have City Council define an “appropriate procedure for reviewing Green Pathway projects.”

Encourage Office Development. Planning Commission also recommended that Council consider incentives for office-commercial -- along with the incentives that have already been drafted for residential-commercial buildings. Commissioners argued that private office and research activity generated by UC Berkeley and Berkeley’s workforce is being lost to other cities, like Emeryville, and that increasing the amount of office space would capture these types of jobs, increase City revenues, place more people near transit, and make Downtown a more dynamic synergistic place.

Focus Growth Downtown. Planning Commission recommended that Council add a policy encouraging growth Downtown, rather than diverting development away from Downtown -- and possibly to other Berkeley locations. Discussion leading up to this motion expressed concerns that DAP development requirements may make desirable Downtown development harder – not easier – and that development would become more likely in locations with limited transit access and greater impacts on residential neighborhoods.

Information Requested by City Council

Relating Building Height to Number of Dwelling Units. To inform its discussions on maximum building heights, the Council asked for the approximate yields from buildings of different heights. These estimates are consistent with the actual yield of recent projects, and factor:

- typical floor-to-floor dimensions;
- typical maximum residential building depths (for sufficient interior air and light);
- dwelling unit sizes that are in line with trends;
- street-facing “stepbacks” above 85 feet; and
- limits on building width at elevations above 120 feet (regardless of lot size).

These estimates do not consider whether projects of certain heights may or may not be feasible. For an analysis that relates building heights to project feasibility, please go to:

http://www.ci.berkeley.ca.us/uploadedFiles/Planning_and_Development/Level_3_-_DAP/FeasibilityReport_Final.pdf

MAXIMUM HEIGHT			13,000sf LOT		26,000sf LOT	
Feet	Total Floors	Resid'l Floors	Resid'l Area (sf)	Res.Units (rounded)	Resid'l Area (sf)	Res.Units (rounded)
75	6	5	42,500	50	85,000	100
120	10	9	69,000	80	142,500	170
140	13	12	94,000	110	168,000	200
180	17	16	128,500	150	202,000	240

Guidelines for Taller Buildings. Draft DAP policies call for special standards and design guidelines for taller buildings, should they be permitted. Notes 8 and 9 of Table LU-1 call for upper-story setbacks (aka “stepbacks”) and separations between taller buildings. Policy HD-4.2 would require project proposals over 75 feet be accompanied by an analysis of shadow, wind, and visual impacts, so that impacts can be reduced as part of the design review process. The Downtown Design Guidelines would be amended to address the design of taller buildings, to encourage architectural excellence and respect the traditional character of Downtown. For example, the Design Guidelines might require that new buildings have a classical “tri-partite” expression of “base, middle and top.” At their base, a forecourt could be encouraged and would provide a way to unify the horizontal tripartite elements with vertical features – thereby avoiding a “wedding cake” effect. Guidelines would help assure well-designed “crowns” at the top of buildings and as important additions to Berkeley’s skyline. Design techniques for “green high-rises” would also encourage the efficient use of resources, promote livability, and minimize local impacts.

Labor Conditions Analysis. Percentages noted in the draft new DAP goals and policies reflect State of California standards for apprenticeship programs and prevailing wages. Labor-related requirements would be developed more fully through zoning amendments and other implementing actions.

California Environmental Quality Act (CEQA)

In 2009, the City Council certified the Final Environmental Impact Report for the Downtown Area Plan. It also adopted findings and a mitigation monitoring plan related to potential environmental impacts. Before adopting the proposed 2010 Downtown Area Plan -- or referring it to the ballot -- the Council must make appropriate CEQA findings. The Council must determine whether the previous EIR is still applicable, and if so, certify the EIR for the revised project and make the findings required by CEQA. If the EIR needs supplemental work, then staff must undertake that work prior to final Council action in July. The following preliminary analysis provides background for eventual Council action. Staff's initial conclusion is that the 2009 DAP EIR is sufficient for Council action on the 2010 DAP as recommended by the Planning Commission. Staff will prepare additional analysis, undertake any additional CEQA process, and prepare appropriate findings for Council action, after we receive direction from Council for the new DAP.

Sufficiency of the DAP EIR. EIRs are intended to provide information on the potential environmental impacts of a project. In establishing development assumptions for the DAP EIR, the Planning Commission asked that the EIR analyze the highest level of development considered during the DAPAC process -- to give themselves and the City Council information on maximum potential environmental impacts, and to provide latitude for decision making. The 2009 DAP eventually allowed for a somewhat lower level of development than evaluated in the EIR.

In evaluating the applicability of the DAP EIR to the new 2010 DAP, the key issues are whether there are any new impacts that were not addressed, or impacts that would be more severe than those considered in the 2009 EIR. While the new DAP retains nearly all of the goals and policies of the previous DAP, it contains some significant modifications. Key 2010 DAP modifications and their relationship to the 2009 DAP EIR are described in the following paragraphs.

The draft DAP includes the following:

1. Reduction in the number and height of taller buildings relative to the 2009 DAP. The number of taller buildings included in the 2009 DAP was already below the number evaluated in the EIR. Therefore, the 2010 DAP would have less impact than the project evaluated in the 2009 DAP EIR. The 2010 DAP retains provisions for reducing adverse shadow, view, and wind impacts to streets and public open spaces to acceptable levels. Some impacts from taller buildings may still be significant and unavoidable as was disclosed in the 2009 EIR and addressed by its "Statement of Overriding Considerations."
2. Stronger and clearer requirements for development to be more sustainable, reduce transportation impacts, provide affordable housing, and provide public open space. The EIR for the 2009 DAP found that certain transportation impacts were significant and unavoidable. Although the proposed requirements on new development will not necessarily reduce impacts to a less than significant level, these new requirements are further mitigations of potential impacts, whether significant or not. As drafted, the 2010 DAP would not have increased or different impacts than the impacts considered in the 2009 DAP EIR.

3. A Voluntary Green Pathway. This addition to the 2010 DAP would allow buildings 75 feet or less to be built “as of right”, if they met certain standards. An “as of right” project is one that can be built without being subject to any further environmental review, beyond that provided by the DAP EIR. Because the 2009 DAP EIR assumed that virtually all development projects would be subject to some further environmental review as part of a Use Permit process, this is a change in the project description and therefore requires additional analysis.

In considering this new project element, the issue under CEQA is whether a proposed “as of right” development would have greater impacts or different potentially significant impacts than those considered in the 2009 DAP EIR. The DAP EIR found that certain potentially significant impacts could not be reduced to a less than significant level but that additional project-specific environmental review could reduce impacts (although not necessarily to a less than significant level):

- Impacts on view corridors. The EIR found that view corridors of the Berkeley hills could be compromised by development. The EIR indicates that site-specific environment review is necessary for buildings between Shattuck Avenue and Oxford Street to consider how impacts can be reduced through setbacks. Despite this proposed mitigation, the impacts were still considered significant and unavoidable. Although design guidelines for this area would emphasize the need to step back upper floors to minimize impacts on view corridors, the impacts would still be significant and unavoidable.
- Shadowing from taller buildings (more than 85 feet) on public open space. The as-of-right projects would only be those that are less than 85 feet under the proposed green pathway. The EIR found that projects of this height would not have significant shadowing impacts, except for shadow impacts on “The Crescent” on the UC campus which was found to be significant and unavoidable and was addressed in the 2009 “Statement of Overriding Considerations
- Historic resources. The 2009 DAP EIR found that projects in Downtown could lead to the loss of some historic resources. This was a significant and unavoidable impact. The proposed Green Pathway would establish a revised procedure for evaluating whether an historic resource is present on a proposed development site. That procedure requires an historic evaluation by an independent consultant selected by the City and review by the Landmarks Preservation Commission. If a project is found to have a significant detrimental impact on an historic resource, Planning Commission interpreted Council’s direction to mean that the Green Pathway would no longer be available to the proposed project; i.e. the standard entitlement process would apply, and that the Green Pathway would have historic protections equivalent to those already present under the existing ordinance -- and would therefore have no significant additional

impact on historic resources beyond those already considered in the EIR. Although not found to be a significant impact in regard to historic resources, the EIR also found that design guidelines were necessary to ensure infill development was compatible with historic resources. The 1993 Downtown Design Guidelines address such concerns and projects using the Green Pathway would have to comply with those Guidelines or new ones that are no less protective.

- Standard conditions. In addition to impacts that were found to be significant and unavoidable, the EIR found that other potentially significant impacts would be reduced through the imposition of standard conditions at the time a Use Permit is granted. These impacts are related to air quality and noise impacts, short-term construction impacts, and the possible disturbance of archeological resources during excavation. These standard conditions (identified as mitigations in the DAP EIR) are not memorialized in the zoning ordinance, and zoning provisions that establish the as-of-right Green Pathway must therefore be accompanied by explicit requirements to address these potential impacts. On June 9, Planning Commission recommended that the following sentence be added to Green Pathway policy language:

“Zoning provisions that establish the Voluntary Green Pathway shall be accompanied by requirements to address air quality and noise impacts, short-term construction impacts, and the possible disturbance of archaeological resources.”

Assuming the Council’s actions are generally consistent with the work to date of the Planning Commission, staff believes that an addendum to the EIR (to address minor changes in the EIR and correct some errors) can be prepared and that the Council can then certify that the 2009 DAP EIR with an addendum that addresses the 2010 DAP.

FISCAL IMPACTS OF RECOMMENDATION

Implementation of the DAP would increase development fees for streets & open space, parking & alternative transportation, and affordable housing. Using grant funding from MTC/ABAG, financial strategies are being prepared for streets & open space and parking & transportation demand management programs. MTC/ABAG has also funded the preparation of “comprehensive financing plan,” which will coordinate these financing strategies and consider the cumulative impact of multiple fees on development feasibility. Draft recommendations for these financing efforts are expected in late 2010.

RATIONALE FOR RECOMMENDATION

The City Council meeting on June 22 is intended to familiarize the Council with Planning Commission’s draft of the 2010 DAP (and associated General Plan Amendments) -- and for Councilmembers to explore issues that may lead to future revisions. The new DAP goals and policies document and CEQA findings are expected to be on the Council agenda for its meetings on July 6 and July 13, 2010. If the City Council decides to place

the new DAP on the November 2010 ballot, it must take action at its final meeting before the summer recess, on July 13th.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

The City Manager concurs with the content and recommendations of the Commission's Report.

CONTACT PERSON

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ATTACHMENTS

1. Draft new 2010 Downtown Area Plan (Planning Commission).
2. Draft General Plan amendments for consistency (Planning Commission).
3. Recommendations different than Council direction (Planning Commission).